

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

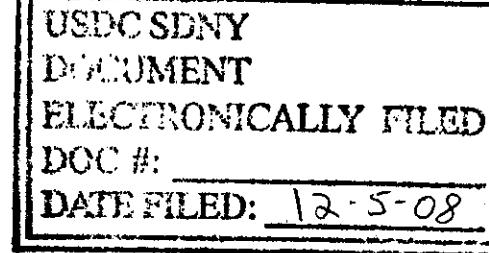
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MOUSTAPHA MAGASSOUBA,

Plaintiff, : 08 Civ. 4560 (GEL) (HBP)

-against : MEMORANDUM OPINION
AND ORDER

WARDEN JAMES N. CROSS, et al., :

Defendants. :



PITMAN, United States Magistrate Judge:

On or about November 14, 2008, plaintiff filed a document entitled "Order to Show Cause for Preliminary Injunction and Temporary Restraining Order" (Docket Item 23). The document, however, makes no showing of the urgency that would justify the issuance of an order to show cause, nor does it even seek injunctive relief. Rather it seeks to compel completion of service of the summons and complaint, certain discovery and other forms of non-injunctive relief. Accordingly, I treat Docket Item 23 as an ordinary motion for the relief identified therein. Defendants have responded by letter dated December 3, 2008.

To the extent plaintiff seeks an Order requiring the preservation of certain unidentified evidence and requiring the Government make certain parties available for trial, plaintiff's motion is denied. In its letter dated December 3, 2008, the Government represents that it will voluntarily comply with its

obligation to preserve relevant evidence and will produce witnesses who are under its control and who have relevant material information. In this regard, plaintiff should bear in mind that to the extent he will seek to call current or former inmates as witnesses, the Government does not ordinarily have any control over inmates after they are released.

To the extent plaintiff's motion seek information concerning the status of service of process on D. Scott, Larry Barris and Thomas Garfield, the Government advises in its December 3, 2008 letter that Scott has been served but that Barris and Garfield have not yet been served due to the fact that plaintiff provided inaccurate addresses to the Marshals Service. The Government's December 3, 2008 letter provides updated address information for these individuals. Plaintiff is directed to provide corrected forms USM-285 to the Marshals Service so that it can serve Barris and Garfield.

To the extent plaintiff seeks to compel discovery, his application is denied in light of the fact that I issued an Order on October 7, 2008 staying all discovery.¹

Defendants' time to serve their contemplated motion to dismiss is extended to January 20, 2009.

¹I note in this regard that to the extent plaintiff is seeking discovery to aid him in identifying one of the "John Doe" defendants, I note that the Government has voluntarily provided this information in its December 3, 2008 letter.

The Clerk of the Court is directed to mark Docket Item 23 closed.

Dated: New York, New York
December 4, 2008

SO ORDERED


HENRY PITMAN
United States Magistrate Judge

Copies mailed to:

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